KHALIQ MEHTAB MOHD ISHAQ & ORS
v. DEWAN UNDANGAN NEGERI PULAU PINANG & ANOR

HIGH COURT OF MALAYA, PULAU PINANG
ANAND PONNUDURAI J
[ORIGINATING SUMMONS NO: PA-24NCVC-764-06-2023]
12 JANUARY 2024

Abstract – *While the decision as to the disqualification of an assemblyman is within the jurisdiction and prerogative of the State Legislative Assembly, it can still be questioned by the court if the decision is made improperly and in excess of jurisdiction and/or without legal basis.*

CIVIL PROCEDURE: *Originating summons – Declarations – Motion tabled and debated during State Legislative Assembly and passed leading to assemblymen having to vacate seats as State Assemblyman – Assemblymen seeking declarations that resolution passed void/unlawful – Whether State Legislative Assembly and Speaker acted within legal framework of art. 14A of Constitution of State of Penang ('PSC') in declaring assemblymen's seats vacant – Whether impugned motion and any resolution passed non-justiciable by virtue of art. 18 of PSC and/or art. 72(1) of Federal Constitution – Whether could be questioned by court*

The plaintiffs were all previously duly elected assemblymen for the State of Penang at the 14th Malaysian General Election ('GE-14'). The Pakatan Harapan ('PH') coalition contested in GE-14 and at that point of time, PH was not a registered political party and did not have any members of its own. The first and second plaintiffs were members of Parti Pribumi Bersatu Malaysia ('Bersatu') and they had to run for GE-14 under the logo/symbol of Parti Keadilan Rakyat ('PKR') since PH was then unregistered. The first and second plaintiffs were successfully elected as the State Assemblymen for the constituency seats of Bertam and Telok Bahang, respectively. The third and fourth plaintiffs, on the other hand, were members of PKR and they too contested under the logo of PKR. The third and fourth plaintiffs were successfully elected as the State Assemblymen for the constituency seats of Sungai Acheh and Seberang Jaya, respectively. In June 2020, the third and fourth plaintiffs were expelled from PKR. A motion pursuant to art. 14A of the Constitution of the State of Penang ('PSC') was tabled, debated and passed which led to the four plaintiffs having to vacate their seats as State Assemblymen ('impugned motion'). The Hansard for the Penang State Legislative Assembly revealed that the impugned motion was passed because (i) the first and second plaintiffs exited from the PH coalition; and (ii) the third and fourth plaintiffs were expelled from PKR. Through this originating

summons, the four plaintiffs sought, *inter alia*, declarations that (i) the resolution passed was void/unlawful; and (ii) the plaintiffs remained members of the State Legislative Assembly until its dissolution in June 2023. The issue that arose was whether the defendants had acted within the legal framework of art. 14A of the PSC in declaring the plaintiffs' seats vacant and, if not, whether the impugned motion and resolution passed thereto were non-justiciable by virtue of art. 18 of the PSC and/or art. 72(1) of the Federal Constitution.

Held (allowing claims of first and second plaintiffs; dismissing claims of third and fourth plaintiffs):

(1) The plaintiffs, at the outset, contended that due to the language used in the impugned motion, it was not a proper motion that would operate to vacate the seats of the plaintiffs. There was no merit in the plaintiffs' contention and the said motion was not defective. Whilst the 2023 motion may be slightly differently worded as compared to the earlier 2020 motion, the said motion could not have been stated any clearer. It was clearly put before the first defendant for it to resolve and declare the four seats vacant with the consequential decision that if such a declaration was passed, for the Election Commission to be informed of such vacancy. There was certainly no doubt in anyone's mind as to what was being tabled and the decision that was made. Even the plaintiffs appeared to have no doubt about the decision made and its effect when they immediately left the first defendant after such resolution was passed. Further, as per art. 14(4) of the PSC, the Election Commission was indeed subsequently informed of the occurrence of such vacancies. (paras 18, 22 & 23)

(2) Whilst it was contended that art. 14A of the PSC should be read harmoniously with art. 49A of the FC, the Federal Court in the recent case of *Iki Putra Mubarak v. Kerajaan Negeri Selangor & Anor* had determined that although the Constitution must be interpreted harmoniously, if the plain meaning of the words is clear, then it must be given effect to. Article 14A of the PSC was clear and was applicable to the third and fourth plaintiffs for the following reasons: (i) there was no dispute that the third and fourth plaintiffs were both members of PKR and were elected during the GE-14 as candidates of PKR; (ii) the third and fourth plaintiffs admitted that they were expelled as members of PKR. They did not challenge the validity of the expulsions despite the law providing them with an avenue to do so; and (iii) art. 14A(1) of the PSC uses the word 'resigns' as a separate limb as its plain and natural meaning have an element of voluntariness whereas the plain and natural meaning of 'expelled' connotes an element of involuntariness as it is an adverse decision made by a higher authority against the subject. To add

an element of voluntariness to the second and third limbs in art. 14A(1) of the PSC would first be inherently contradictory to the plain meaning of the words 'expelled' and 'for any reason whatsoever' and secondly, render the word 'resign' superfluous. The third and fourth plaintiffs were not entitled to the declarations sought. (paras 38 & 40-45)

(3) Whilst the first and second plaintiffs did indeed contest in GE-14 under the PKR symbol, they were to be considered as having been elected as a candidate of PKR. The mere use of the symbol of the PKR logo when they contested in GE-14 did not and could not make them members of the political party, PKR. Even if they were so elected as a candidate of PKR, the second limb of art. 14A of the PSC was not applicable as they had certainly not resigned, expelled from or ceased for any reason to be a member of that party. The words 'that party' must necessarily mean that very same party on which the assemblyman was elected. In this case, there was no dispute that the first and second plaintiffs were still members of Bersatu to date. As opposed to the facts/situation in relation to the third and fourth plaintiffs, the first and second plaintiffs had certainly made out a case that art. 14A of the PSC was not applicable to them and as a result thereof, the decision for them to vacate their seats being void or unlawful. (paras 54-56)

(4) If the decision to disqualify the plaintiffs was made in excess of the legal framework of art. 14A of the PSC, it could still be legally challenged and questioned by this court. The crucial question was whether or not the first defendant had a legislative basis to make the decision it made for the plaintiffs to vacate their seats. There was certainly a legislative basis to make the decision pertaining to their seats. Since art. 14A of the PSC was applicable to them and there was a legislative basis for the exercise of that power to remove them, as such, was non-justiciable and could not be interfered with. The exercise of such power to remove them was not exercised improperly as contended. The position *vis-a-vis* the first and second plaintiffs, however, was different from the third and fourth plaintiffs. Having concluded that art. 14(1)(a) of the PSC was not applicable to them in the first place, there was certainly merit in their contention that there was no legislative basis for them to vacate their seats. It was a situation where there was no legal foundation in the first place to even move the motion against the first and second plaintiffs. The first defendant had acted in excess of jurisdiction, vacating the seats of the first and second plaintiffs. (paras 63, 79, 80 & 83)

Case(s) referred to:

Datuk Pasamanickam & Anor v. Agnes Joseph And R Narayanan Samy V Agnes Joseph [1980] CLJU 15; [1980] 1 LNS 15 FC ***(refd)***

Dewan Undangan Negeri Selangor & Ors v. Mohd Hafarizam Harun [2016] 7 CLJ 143 FC ***(refd)***

Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 465 FC ***(refd)***

Tan Sri Hj Muhyuddin Hj Mohd Yassin & Anor v. Dollah Hj Salleh [1989] CLJU 5; [1989] 1 LNS 5 SC ***(refd)***

Teng Chang Khim v. Badrul Hisham Abdullah & Anor [2017] 9 CLJ 630 FC ***(refd)***

The Speaker Of Dewan Undangan Negeri Of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v. Ting Tiong Choon & Ors And Other Appeals [2020] 3 CLJ 757 FC ***(refd)***

YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener) [2009] 4 CLJ 253 FC ***(refd)***

Yang Dipertua, Dewan Rakyat & Ors v. Gobind Singh Deo [2014] 9 CLJ 577 FC ***(refd)***

Legislation referred to:

Constitution (Amendment) (No. 3) Act 2022, s. 6

Constitution of the State of Penang, arts. 14(4). 14A(1)(a), 18(1)

Constitution of the State of Sarawak, art. 19

Federal Constitution, arts. 10, 49A, 72(1)

Laws of the Constitution of Selangor 1959, art. 69

For the plaintiffs - Azhar Azizan, Chetan Jethwani & Ava Gee; M/s Chetan Jethwani & Company

For the defendants - Malik Imtiaz Sarwar & Khoo Suk Chyi; M/s Malik Imtiaz Sarwar & Surendra Ananth; M/s Surendra Ananth

Reported by Lina E

JUDGMENT

Anand Ponnudurai J:

Introduction

[1] The four plaintiffs were all previously duly elected Assemblymen for the State of Penang at the 14th Malaysian General Election (hereinafter referred to as "GE-14"). A motion dated 10 February 2023 pursuant to art. 14A of the Constitution of the State of Penang (hereinafter referred to as "the PSC") was tabled and debated during the Penang State Legislative Assembly on 6 March 2023 which was duly passed which led to the four plaintiffs having to vacate their seats as State Assemblyman.

[2] Through this originating summons, the four plaintiffs seek *inter alia* declarations that the said resolution passed was void/unlawful and as a result thereof also seek declarations that the plaintiffs remained members of the State Legislative Assembly until its dissolution in June 2023.

[3] This originating summons brings to fore the substantive issue for judicial determination as to whether the defendants had acted within the legal framework of art. 14A of the PSC in declaring the plaintiffs' seats vacant and if not, whether the impugned motion and resolution passed thereto are non-justiciable by virtue of art. 18 of the PSC and/or art. 72(1) of the Federal Constitution.

[4] Upon hearing counsel with the aid of their written submissions, I had on 8 December 2023 allowed the claim of the first and second plaintiffs and dismissed the claim of the third and fourth plaintiffs. There has been no appeal by the defendants against my decision to allow the claim of the first and second plaintiffs but the third and fourth plaintiffs have, on 8 January 2024, filed an appeal against my decision to dismiss their claim.

[5] As such, I will set out the background facts, the applicable law and provide my analysis of the same with a view of providing the reasons for my decision in dismissing the third and fourth plaintiffs' claim and in allowing the first and second plaintiffs' claim.

Background Facts

[6] The background facts are largely undisputed and can be summarised as follows.

[7] The Pakatan Harapan (hereinafter referred to as "PH") coalition contested in GE-14 that was held on 9 May 2018. At that material point in time, PH was not a registered political party and did not have any members of its own.

[8] The first and second plaintiffs are members of Parti Pribumi Bersatu Malaysia (hereinafter referred to as "Bersatu"). They have always been members of Bersatu and they remain so to this day. The first and second plaintiffs had to run for GE-14 under the logo/symbol of Parti Keadilan Rakyat (hereinafter referred to as "PKR") since PH was then unregistered, and they were successfully elected as the State Assemblymen for the constituency seats of Bertam (N. 2) and Telok Bahang (N. 40) respectively.

[9] It is undisputed that the first and second plaintiffs have never been members of PKR. On the other hand, the third and fourth plaintiffs were at the material time in 2018, members of PKR and they contested under the logo of PKR. They were successfully elected as the State Assemblymen for the constituency seats of Sungai Acheh (N. 21) and Seberang Jaya (N. 10).

[10] In or around June 2020, the third and fourth plaintiffs were expelled from their political party, PKR. They now contend that they were not afforded with a prior right to be heard and no reason was given for their expulsion.

[11] On 10 February 2023, a motion was tabled in the first defendant for the four plaintiffs' seats to be vacated pursuant to art. 14A of the PSC (hereinafter referred to as the "impugned motion"). The impugned motion was debated during the Penang State Legislative Assembly sitting on 6 March 2023 and was passed. The plaintiffs were then asked to leave the first defendant on the same day itself which the four plaintiffs duly did.

[12] The Hansard for the Penang State Legislative Assembly sitting on 6 March 2023 reveals that the impugned motion was based/passed on the following grounds/reasons:

(i) in relation to the first and second plaintiffs – because Bersatu has exited from the PH coalition;

(ii) in relation to the third and fourth plaintiffs – because they were expelled from PKR.

[13] Prior to this originating summons, it is to be noted that there was a similar motion set to be tabled in the State Assembly in late October 2020. However, that motion was retracted and not tabled due to legal proceedings filed by the plaintiffs. Those legal proceedings were aimed at challenging the constitutionality of art. 14A of the PSC and the Federal Court ultimately on 3 August 2022 found that art. 14A of the PSC is not inconsistent with art. 10 of the Federal Constitution and determined that art. 14A of the PSC is not unconstitutional. There were several other appeals pending on other related matters, but all have since been withdrawn based on the understanding between the parties that the issues pertaining to the validity of the plaintiffs having to vacate their seats would be fully canvassed in this OS.

The Issues To Be Determined And The Parties' Rival Contentions

[14] It is the plaintiffs' contention that the impugned motion and any resolutions passed pursuant thereto are invalid because it was not made within the parameters set by art. 14A of the PSC which will thus allow curial intervention.

[15] The defendants are contending the opposite in that they posit that this court cannot question or interfere with the decision of the first defendant by virtue of art. 18 of the PSC and art. 72(1) of the Federal Constitution *ie*, that the decision is non-justiciable.

[16] Alternatively, the defendants contend that even on the merits of the decision, art. 14A of the PSC was correctly applied to all the plaintiffs.

[17] However, before I consider in detail and analyse the above two substantive issues, I will briefly deal with the plaintiffs' contention that the impugned motion that was tabled was *ex facie* defective based on its contents.

Is The Impugned Motion *Ex Facie* Defective?

[18] The plaintiffs, at the outset, contend that due to the language used in the impugned motion, it was not a proper motion that would operate to vacate the seats of the plaintiffs. In this regard, it was highlighted by learned counsel for the plaintiffs that the objection raised in this regard was not a matter of semantics but bearing in mind that we are dealing with a resolution of the State Assembly (and not that of a private enterprise), it is critical that the resolution has to be precise and state exactly what it intends to do. It is perhaps apt that I set out the 2023 resolution which reads as follows:

USUL PENGISYTIHARAN KEKOSONGAN KERUSI DEWAN UNDANGAN NEGERI PULAU PINANG DI BAWAH PERKARA 14A PERLEMBAGAAN NEGERI PULAU PINANG

Dengan hormatnya saya merujuk kepada perkara di atas.

2. Menurut subperaturan 31(1) Peraturan-Peraturan Majlis Mesyuarat Dewan Undangan Negeri Pulau Pinang, saya selaku Ahli Majlis Mesyuarat Kerajaan Negeri (Hal Ehwal Agama Islam, Koperasi & Pemerkasaan Komuniti) bercadang untuk membentangkan suatu usul yang bertajuk "Pengisytiharan Kekosongan Empat (4) Kerusi Dewan Undangan Negeri Pulau Pinang Di Bawah Perkara 14A Perlembagaan Negeri Pulau Pinang" dalam Mesyuarat Ketiga Penggal Kelima Dewan Undangan Negeri Keempat Belas seperti berikut:

" 1) Bahawa Dewan ini meluluskan suatu usul yang bertajuk "Pengisytiharan Kekosongan Empat (4) Kerusi Dewan Undangan Negeri Pulau Pinang Di Bawah Perkara 14A Perlembagaan Negeri Pulau Pinang" ("**Pengisytiharan tersebut**") akibat kegagalan Ahli-ahli Dewan Undangan Negeri ("**ADUN**") yang berkenaan untuk mengosongkan kerusi mereka di bawah Fasal 14A(1) Perlembangan Negeri Pulau Pinang. Senarai kerusi dan ADUN yang terlibat adalah seperti berikut:

(i)	Seberang Jaya (N10)	-	YB. Dr. Afif bin Bahardin
(ii)	Sungai Acheh (N21)	-	YB. Zulkifli bin Ibrahim
(iii)	Bertam (N2)	-	YB. Khaliq Mehtab bin Mohd Ishaq
(iv)	Telok Bahang (N40)	-	YB. Zolkifly bin Md Lazim;

2) Bahawa Dewan ini bersetuju, sekiranya Pengisytiharan tersebut diluluskan, Yang di-Pertua Dewan Undangan Negeri menurut Fasal 14A(4) Perlembagaan Negeri Pulau Pinang hendaklah memberitahu Suruhanjaya Pilihan Raya ("**SPR**") bahawa telah berlakunya kekosongan kerusi Dewan Undangan Negeri Pulau Pinang; dan

3) Bahawa Dewan ini mengambil maklum mengenai *proviso* di bawah Fasal 19(5) Perlembagaan Negeri Pulau Pinang bahawa suatu kekosongan luar jangka tidak boleh diisi memandangkan Dewan Undangan Negeri Pulau Pinang akan terbubar dalam tempoh kurang dari 2 tahun.".

[19] Learned counsel for the plaintiffs submit that the above is defective as it is merely a motion to consider a motion and not a motion to be passed and that another motion would be required thereafter. In fact, a comparison was drawn to the earlier motion in 2020, which was withdrawn, which learned counsel contends should have been the proper wording of the 2023 motion. The previous 2020 motion reads as follows:

A Bahawa Dewan ini **meluluskan pengisytiharan kekosongan empat (4) kerusi Dewan Undang Negeri Pulau Pinang** akibat kegagalan Ahli-ahli Dewan Undang Negeri yang berkenaan untuk mengosongkan kerusi mereka di bawah Perkara 14A Fasal 1 Perlembagaan Negeri Pulau Pinang ("**Pengisytiharan tersebut**").

B Senarai kerusi dan Ahli Dewan Undang Negeri yang terlibat adalah seperti berikut:

(i) Seberang Jaya (N10) - YB Dr Afif bin Bahardin

(ii) Sungai Acheh (N21) - YB Zulkifli bin Ibrahim

C (iii) Bertam (N2) - YB Khaliq Mehtab bin Mohd Ishaq

(iv) Telok Bahang (N40) - YB Zolkifly bin Md Lazim

(emphasis added)

[20] It is not disputed that no further motion was presented and that the plaintiffs had vacated their seats upon the above 2023 resolution being D tabled, debated and passed.

[21] The defendants, on the other hand, contend that the motion was not at all defective and was not a motion to pass a future resolution.

[22] In my view, having considered all matters, I find no merit in the E plaintiffs' contention and am of the opinion that the said motion is not defective. In my view, whilst the 2023 motion may be slightly differently worded as compared to the earlier 2020 motion, the said motion could not have been stated any clearer. It was clearly put before the first defendant for it to resolve and declare the four seats vacant with the consequential decision F that if such a declaration was passed, for the Election Commission to be informed of such vacancy. There was certainly no doubt in anyone's mind as to what was being tabled and the decision that was made. Even the plaintiffs appear to have no doubt about the decision made and its effect when they immediately left the first defendant after such resolution was passed. Further, as per art. 14(4), the Election Commission was indeed subsequently G informed of the occurrence of such vacancies.

[23] In my considered view, if at all there were issues with the motion, it would only be proper for the matter to be raised as an objection at the material time so that it could have been dealt with by the Speaker. In my further view, whether or not the motion is in a form acceptable under the H standing orders is ultimately for the House to decide and not to be attacked collaterally in these proceedings. In any event, as I have highlighted, no objection was taken on the motion at the material time, and the substantive idea or intent behind the same was very clear to all and sundry.

I **[24]** I will now move on to consider the substantive issues.

Issue: Whether The Defendants Had Acted Within The Legal Framework Of Article 14A Of The Constitution Of The State Of Penang In Declaring The Plaintiffs' Seats Vacant?

[25] It is perhaps apt that I first set out art. 14A of the PSC which reads as follows:

> (1) Subject to this Article, a member of the Legislative Assembly shall vacate his seat if:
>
> (a) **having been elected as a candidate of a political party, he resigns or is expelled from, or ceases for any reason whatsoever to be a member of that party;** or
>
> (b) having been elected otherwise than as a candidate of a political party, he joins a political party.
>
> (2) A member of the Legislative Assembly shall not be required to vacate his seat pursuant to this article only be reason of:
>
> (a) the dissolution or cancellation of the registration of his party; or
>
> (b) his resignation from the membership of the party upon election as a Speaker.
>
> (3) Notwithstanding anything contained in art. 13(5), a member of the Legislative Assembly who vacates his seat under this article may seek re-election at any ensuing election.
>
> (4) The Speaker shall notify the Election Commission upon the occurrence of a vacancy under this Article.
>
> (emphasis added)

[26] The relevant part of art. 14A of the PSC which is pertinent in this matter appears to be art. 14A(1)(a) of the PSC.

[27] The plaintiffs submit that there are two elements which must be satisfied before art. 14A(1)(a) of the PSC can be triggered, which are as follows:

(i) the assemblyman must be elected as a candidate of a political party; and

(ii) the assemblyman must resign or be expelled from or cease for any reason whatsoever to be a member of that party.

[28] In my view, the above two elements are required which sets out the legal limits within which the seat of a member of the Penang State Legislative Assembly can be vacated.

[29] Bearing in mind that the factual circumstances relating to the first and second plaintiffs differ from that of the third and fourth plaintiffs, I propose to deal with each pair separately and in this regard, I will deal with the third and fourth plaintiffs first.

A **The Third And Fourth Plaintiffs**

[30] Having considered the facts and circumstances of the third and fourth plaintiffs, *to wit*, that they were elected as candidates of the political party PKR and have since been expelled by PKR, it appears that art. 14A(1)(a) of the PSC applies to these two plaintiffs. In fact, whilst learned counsel for the B plaintiffs concedes that it does at first blush appear to be applicable, he attempts to persuade me to interpret the provision in such a way so as to render it inapplicable to the third and fourth plaintiffs.

[31] In this regard, it is submitted by the plaintiffs that the words 'expelled C from or ceases for any reason whatsoever to be a member of that party, in art. 14A(1)(a) of the PSC must be read to include an element of intentional conduct. In other words, for art. 14A(1)(a) of the PSC to be applicable, an assemblyman who has been subjected to expulsion or cessation of membership must have done something to justify the expulsion or cessation of membership. D

[32] The above is contended to be in line with the intention of the framers of art. 14A of the PSC, as revealed in the Hansard, exhibited as exh. "LCK-1" of the defendants' affidavit in reply which they contend is to prevent the ill of intentional party hopping which could give rise to destabilisation. It is E further contended that it is certainly not the intent of art. 14A of the PSC to punish an assemblyman who did not switch allegiances.

[33] The relevant excerpt of the Hansard is reproduced as below:

> Rang Undang-Undang ini bertujuan untuk membuat suatu pindaan yang amat penting kepada Perlembagaan Negeri Pulau Pinang **agar** F **membanteras budaya tidak sihat dan tidak beretika, melompat daripada satu parti ke satu parti demi habuan politik**, menegakkan integrity dan akauntibiliti awam serta memulangkan kuasa demokratik untuk memilih Kerajaan dan wakil-wakil rakyat kepada rakyat.
>
> (emphasis added)

G **[34]** The plaintiffs then submit that the third and fourth plaintiffs were involuntarily expelled as members of PKR without reasons given and without the right to be heard and that they did not intentionally switch parties.

[35] Reference was also drawn to the newly and recently passed art. 49A H of the Federal Constitution which provides that a member of the House of Representatives shall not cease to be a member by reason of expulsion of his membership of his political party. Reference was also drawn to s. 6 of the Constitution (Amendment) (No. 3) Act 2022 which also provides that a member shall not cease to be a member only by reason of expulsion of I membership from his political party. However, whilst art. 49A of the Federal Constitution is not applicable to a State Assembly and s. 6 of the Constitution (Amendment) (No. 3) Act 2022 has yet to come into force in

the State of Penang, the plaintiffs urge this court to interpret art. 14A of the PSC so as to be consistent with the law in the future and that the court should read art. 14A of the PSC in such a way to reflect current use.

[36] In this regard, the plaintiffs submit that a harmonious reading of art. 14A of the PSC and art. 49A of the Federal Constitution can be achieved if one includes an element of voluntariness to warrant vacating a seat. It is finally submitted by the plaintiffs that art. 14A of the PSC should not be held applicable to the third and fourth plaintiffs who were forced to switch parties after they were expelled from their parties, especially when no grounds were provided for the expulsion.

[37] From the above, it can be gleaned that despite the express wording of art. 14A of the PSC, the third and fourth plaintiffs are in substance contending that they were unfairly expelled from PKR without any reason and without being afforded the right to be heard.

[38] In my view, having considered all matters, in respect of the third and fourth plaintiffs, I find the plaintiffs' contentions to be without merit. Firstly, whilst it is contended that art. 14A of the PSC should be read harmoniously with art. 49A of the Federal Constitution, the Federal Court in the recent case of *Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 465; [2021] 2 MLJ 323 has determined that although the Constitution must be interpreted harmoniously, if the plain meaning of the words is clear, then it must be given effect to. Azahar Mohamed CJM enunciated as follows:

> [106] ... As can be seen, the FC deliberately used specific language in describing the nature of the preclusion clause. In my opinion, the wordings of the preclusion clause are compellingly clear and unequivocal and admit of no other interpretation. The clause is as plain and clear as language can express it.

[39] Furthermore, as alluded to earlier, neither art. 49A of the Federal Constitution nor s. 6 of the Constitution (Amendment) (No. 3) Act 2022 are applicable. In this regard, the plaintiffs have not sought any declaration that art. 14A of the PSC is unconstitutional for being inconsistent with art. 49A of the Federal Constitution.

[40] In my further considered opinion, art. 14A of the PSC is clear and is applicable to the third and fourth plaintiffs for the following reasons.

[41] Firstly, there is no disputing that they were both members of PKR and were elected during GE-14 as candidates of the political party PKR. They have also admitted in the affidavit in support that they were expelled as members of the political party PKR on 1 July 2020 after the Sheraton Move.

[42] It is pertinent to note that the third and fourth plaintiffs did not challenge the validity of the expulsions despite the law providing them with an avenue to do so. The highest council or committee in any society is bound

by its Constitution and does not have the power to exceed its jurisdiction by a wrong interpretation of such Constitution. The Federal Court has on two occasions determined that the courts retain the power to quash decisions of societies made in breach of the rules of natural justice or which are arbitrary. (See the cases of *Datuk Pasamanickam & Anor v. Agnes Joseph And R Narayanan Samy V Agnes Joseph* [1980] CLJU 15; [1980] 1 LNS 15; [1980] 2 MLJ 92 and *Tan Sri Hj Muhyuddin Hj Mohd Yassin & Anor v. Dollah Hj Salleh* [1989] CLJU 5; [1989] 1 LNS 5; [1989] 3 MLJ 484).

[43] As seen earlier, the third and fourth plaintiffs aver in their affidavit in support that it is necessary to introduce an element of voluntariness to the phrase "expelled from, or ceases for any reason whatsoever to be a member of that party" in the interpretation of art. 14A of the PSC to trigger the disqualification to set a clear legal limit of the power to disqualify a member of the State Assembly. With respect, in my view, such contention does violence to the wording of art. 14A of the PSC. I agree with learned counsel for the defendants that art. 14A(1) of the PSC uses the word "resigns" as a separate limb as its plain and natural meaning has an element of voluntariness, whereas the plain and natural meaning of "expelled" connotes an element of involuntariness as it is an adverse decision made by a higher authority against the subject. (See definitions of "resigns" and "expelled" in the Merriam-Webster Dictionary).

[44] In my view, to add an element of voluntariness to the second and third limbs in art. 14A(1) of the PSC would first, be inherently contradictory to the plain meaning of the words "expelled" and "for any reason whatsoever", and secondly, render the word "resign" superfluous.

[45] In conclusion, having considered all matters and upon a close scrutiny of the facts relating to the third and fourth plaintiffs as well as considering the provision of art. 14A of the PSC, I have no hesitation in concluding that the same was applicable to the third and fourth plaintiffs and they are not entitled to the declarations sought.

The First And Second Plaintiffs

[46] In so far as the first and second plaintiffs are concerned, the plaintiffs submit that based on the plain reading and natural meaning of art. 14A(1)(a) of the PSC, the provision is inapplicable to the first and second plaintiffs.

[47] This is because the first and second plaintiffs have always been and remain members of Bersatu. Even if the first and second plaintiffs ran for GE-14 under the logo of PKR as part of the PH coalition, they have never been members of PKR. It is submitted that the use of the logo of another political party (PKR) in the GE-14 does not change the status of their membership in Bersatu.

[48] It is further contended that the fact that Bersatu was part of an unregistered coalition (PH) does not change or affect their membership in Bersatu. In fact, Bersatu was not a part of any formal coalition party as PH itself was not a registered political party at that material time.

[49] It has also been highlighted that the first and second plaintiffs had contested as Bersatu members in the GE-14 (despite using the PKR logo), and they remain members of Bersatu to this day. They have always been members of Bersatu and were not and never have been members of PKR. In other words, they have not left the political party they were elected to and they certainly have not resigned, been expelled, or ceased to be members of Bersatu.

[50] Reliance was also placed on the Hansard for the Penang State Legislative Assembly sitting on 6 March 2023, whereby the reason for vacating the seats of the first and second plaintiffs was only on the basis that Bersatu had exited the PH coalition.

[51] It is thus contended that quite apart from the fact that PH was not a registered political party at the material time and also the fact that the first and second plaintiffs had contested and won the seat as Bersatu members (and not as members of PH or PKR), the basis to remove them was clearly inconsistent with the plain reading of art. 14A(1)(a) of the PSC which uses the word "having been elected as a candidate of a political party" and "ceases for any reason whatsoever to be a member of that party".

[52] As such, it is contended that the resolution passed in so far as the first and second plaintiffs are concerned violated art. 14A of the PSC which tantamount to the defendants exceeding its legal limits. In this regard, it is also submitted by the plaintiffs that the mere idea of a political party realigning itself being a trigger to disqualify its members is a gross overreach and does not amount to party hopping, as highlighted by the Minister during the Parliamentary debate on art. 49A of the Federal Constitution.

[53] The defendants, on the other hand, submit that the plaintiffs' contention above is misplaced. In this regard, whilst it is not disputed that the first and second plaintiffs were indeed members of Bersatu during GE-14 and have not ceased to be members of Bersatu to date, the critical words to be considered in art. 14A of the PSC is the meaning of the words "political party". The defendants draw the court's attention to the definition of political party in the Societies Act 1966 and submit that it includes a political coalition which has been registered under the Societies Act 1966. The defendants then submit that the fact that Pakatan Harapan was not registered at the time of the election is immaterial and that what was material was that the first and second plaintiffs had chosen the PKR political party symbol when it stood for election and it was that basis upon which voters cast their votes.

[54] With respect to learned counsel for the defendants, whilst the first and second plaintiffs did indeed contest in GE-14 under the PKR symbol, I am hard-pressed to agree with their submission that they are therefore to be considered as having been elected as a candidate of PKR. In my view, the mere use of the symbol of the PKR logo when they contested in GE-14 does not and cannot make them members of the political party, PKR. Even if I were to agree that they were so elected as a candidate of PKR, I am certainly not prepared to agree or to conclude that the second limb of art. 14A of the PSC is applicable as in my view, they have certainly not resigned, expelled from or ceased for any reason to be a member of that party. In my view, the words 'that party' must necessarily mean that very same party on which the assemblyman was elected. In this case, there is no dispute that the first and second plaintiffs are still members of Bersatu to date.

[55] Even if the first and second plaintiffs have since withdrawn their support for the PH State Government and voiced their support for Bersatu, that in my view, does not bring them within the ambit of art. 14A(1)(a) of the PSC.

[56] In the upshot, as opposed to the facts/situation in relation to the third and fourth plaintiffs, in my view, the first and second plaintiffs have certainly made out a case that art. 14A of the PSC was not applicable to them and as a result thereof, the decision for them to vacate their seats being void or unlawful. This then leads me to the next issue of whether or not the motion passed/decision made is non-justiciable.

Issue: Whether The Impugned Motion And Any Resolution Passed In Pursuant Thereto Are Non-justiciable By Virtue Of Article 18 Of The Constitution Of The State Of Penang And/Or Article 72(1) Of The Federal Constitution And Therefore Cannot Be Questioned By This Honourable Court?

[57] The starting point must be art. 18 of the PSC which reads as follows:

> Decision as to disqualification
>
> (1) **If any question arises whether a member of the Legislative Assembly has become disqualified for membership, the decision of the Assembly shall be taken and shall be final**.
>
> Provided that this Article shall not be taken to prevent the practice of the Assembly postponing a decision in order to allow for the taking or determination of any proceedings that may affect the decision (including proceedings for removal of the disqualification).
>
> (2) Where a member of the Legislative Assembly becomes disqualified under paragraph (e) of Clause (1) of the art. 13, or under any law mentioned in paragraph (f) of Clause (1) of art. 13, the foregoing Clause

(1) shall not apply, and he shall cease to be a member of the Legislative Assembly, and his seat shall become vacant, immediately upon his disqualification taking effect in accordance with Clause (3) of art. 13.

(emphasis added)

[58] As expected, the defendants rely on art. 18(1) of the PSC and contend that "the decision of the Assembly shall be taken and shall be final" and argue that the first defendant's decision to disqualify the plaintiffs is non-justiciable and cannot be questioned by this court. The true effect of art. 18(1) of the PSC and similar provisions such as art. 72 of the Federal Constitution have been considered by our apex court in numerous recent cases.

[59] In the case of *The Speaker Of Dewan Undangan Negeri Of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v. Ting Tiong Choon & Ors And Other Appeals* [2020] 3 CLJ 757; [2020] 4 MLJ 303, the issue there concerned the operation of art. 19 of the Sarawak Constitution which was identical to art. 18(1) of the PSC. In that case, the Sarawak State Assembly had disqualified an assemblyman from the Dewan on the basis that he had acquired foreign citizenship before his election. The issue to be determined there was whether the Dewan had acted within its jurisdiction. The High Court had held that the Dewan had no power to disqualify the assemblyman and that there was a breach of the rules of natural justice. At the Court of Appeal, the majority dismissed the Speaker's appeal on the basis that the Dewan had not acted within its jurisdiction. Upon a further appeal to the Federal Court, the appeal by the Speaker was allowed by a majority decision. However, on the issue of justiciability, David Wong CJSS (as one of the minority judges) had held at para. 60 of the judgment with reference to the case of *Dewan Undangan Negeri Selangor & Ors v. Mohd Hafarizam Harun* [2016] 7 CLJ 143; [2016] 4 MLJ 661 that a decision of a DUN is justiciable. Whilst the majority in the Federal Court had concluded that the Speaker had acted within its jurisdiction on the peculiar facts of that case, the following remarks by Abdul Rahman Sebli FCJ (as His Lordship then was) speaking for the majority is pertinent where His Lordship enunciated as follows:

[165] ... the question whether a member continues to be qualified as an elected member of the Dewan after his appointment to the House is the sole prerogative of the House to decide under art. 19(1) of the Sarawak Constitution. **The member's remedy if he is dissatisfied with the decision is to bring the matter to the court**.

[166] ... art. 19(1) must be given a purposive interpretation which, if adopted, confers on the Dewan the jurisdiction to determine whether the speaker or a member should vacate his seat whenever the question of his qualification "arises".

...

A

> [192] ... the power to decide on the qualification of the respondent as a member of the Dewan resides in the Dewan under art. 19(1) of the Sarawak Constitution and not the court. It is the court, if at all, that will be infringing on the doctrine if it were to interfere with the exercise of that power, **unless it can be shown that the power had been exercised improperly and in excess of the jurisdiction**.
>
> (emphasis added)

B

[60] In the case of *Teng Chang Khim v. Badrul Hisham Abdullah & Anor* [2017] 9 CLJ 630; [2017] 5 MLJ 567, which related to the issue that the Speaker declared the seat vacant due to the assemblyman's absence, the Federal Court concluded that the Speaker's decision was not amenable to judicial proceedings as he had acted within the limits of the power given and within parameters.

C

[61] In the case of *Dewan Undangan Negeri Selangor & Ors v. Mohd Hafarizam Harun* [2016] 7 CLJ 143; [2016] 4 MLJ 661 as well as the case of *Yang Dipertua, Dewan Rakyat & Ors v. Gobind Singh Deo* [2014] 9 CLJ 577; [2014] 6 MLJ 812, the Federal Court have also enunciated that the protection of art. 72(1) of the Federal Constitution is provided if the Assembly had acted within its constitutional and legal powers and if there was a legal basis to make the decision made.

D

E

[62] Based on the above decisions, the plaintiffs submit that while the decision as to disqualification of the plaintiffs is within the jurisdiction and prerogative of the first defendant, it can still be questioned by this Honourable Court if the decision was made improperly and in excess of jurisdiction and/or without legal basis.

F

[63] The above decided cases appeared to be the authority for the proposition that if the decision to disqualify the plaintiffs was made in excess of the legal framework of art. 14A of the PSC, it can still be legally challenged and questioned by this court.

Article 72(1) Of The Federal Constitution

G

[64] It is the defendants' further contention that the present dispute was non-justiciable in light of art. 72(1) of the Federal Constitution which provides privilege for the Legislative Assembly.

[65] Article 72(1) of the Federal Constitution provides that:

H

> The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court.

[66] The provision protects the proceedings of the State Legislative Assembly from being interfered with or questioned by the courts.

I

[67] Notwithstanding the above, it is now established that art. 72(1) of the Federal Constitution would only be applicable if the State Legislative Assembly had acted within the power conferred upon them and that the immunity does not arise if the State Legislative Assembly acted outside of or exceeds its powers. In this regard, the Federal Court in the case of *Ting Tiong Choon* (*supra*) enunciated as follows:

> [201] The effect of art. 72(1) of the Federal Constitution on the decision by the Dewan to disqualify and remove the respondent from the House is that the decision 'shall not be questioned in any court'. Thus, **so long as the Dewan had acted within the limits of its power, the court would be in breach of art. 72(1) of the Federal Constitution if it interfered with the exercise of that power**. ...
>
> (emphasis added)

[68] The Federal Court in *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener)* [2009] 4 CLJ 253; [2009] 4 MLJ 24 had also concluded that art. 72(1) of the Federal Constitution does not oust the jurisdiction of the court in that the court has the jurisdiction to ascertain whether a particular power has been provided for. It was held in that case as follows:

> [46] It follows that *art. 72(1) must be read as being subject to the existence of a power of jurisdiction and that the court has the jurisdiction to ascertain whether a particular power that has been claimed has in fact been provided for*. The issues raised by the applicants are therefore justiciable.
>
> (emphasis added)

[69] In *Teng Chang Khim v. Badrul Hisham Abdullah & Anor* [2017] 9 CLJ 630; [2017] 5 MLJ 567, the Federal Court held that:

> [23] Thus, there can be no doubt that the business of Parliament and State Legislative Assemblies are immune from judicial interference. The courts have no power to interfere with the internal management of Parliament or any State Legislative Assembly. This immunity arises from the doctrine of separation of powers between the three principal organs of government, namely, the executive, the legislature and the judiciary.
>
> ...
>
> [36] The question is whether the speaker's action in declaring Badrul's seat for the constituency of N46 Pelabuhan Klang vacant at a press conference was in exercise of his functions to regulate the internal affairs of the SLA and was immune from challenge in court. Our answer is in the affirmative. Firstly, *the declaration was purely made within the parameters set out by art. 69 of the Selangor Constitution*. Secondly, the declaration was inevitably connected to the essential business of the SLA and was made in the performance of the speaker's essential function as a speaker.
>
> [37] Therefore, we are of view that *the speaker in the present case had acted legally under art 69 of the Selangor Constitution* in declaring Badrul's N46 Pelabuhan Klang Constituency seat vacant. The course taken by the

speaker is non-justiciable as it is protected by art 72(1) of the Federal Constitution and paras 2-3 of the Schedule to art. 77 of the Selangor Constitution.

...

[49] On appeal, the Court of Appeal upheld the decision of the High Court. On further appeal this court in dismissing the appeal, amongst others, held:

> [46] As regards this appeal, *it is our judgment the assembly must act within its constitutional and legal powers before the protection provided for by art. 72(1) can arise*, before passing a resolution of an act of contempt having been committed beyond the walls of the assembly. The assembly's powers are limited by the Selangor State Constitution.

[50] As in *Zambry*'s case, on the facts, *Hafarizam*'s case is also distinguishable from the present case. In both cases, *the respective Legislative Assemblies had exceeded its jurisdictions as provided under the Constitution of each state hence there was room for judicial interference*.

[51] In conclusion, we are of the view that in the present case, *the speaker was acting within the limits of the power given to him under art. 69 of the Selangor Constitution* when he declared the N46 Pelabuhan Klang Constituency seat vacant. Even though the declaration was made outside the SLA proceedings, it was inevitably connected with the essential business of the SLA, *made within the parameters set out by art. 69 of the Selangor Constitution* and was made to regulate the internal affairs of the SLA. Consequently, we rule that the speaker's act is non-justiciable and the speaker is entitled to the protection of parliamentary privilege enjoyed by the SLA as provided for under art. 72(1) of the Federal Constitution and paras 2 - 3 of the Schedule to art. 77 of the Selangor Constitution.

(emphasis added)

[70] In *Teng Chang Khim* (*supra*), the Speaker was empowered by art. 69 of the Selangor State Constitution to declare the seat vacant upon a member's absence without leave for a period of six months. Once such power was ascertained, the court gave full regard to the immunity afforded to that decision.

[71] In upholding the same principle, the courts have conversely decided that the immunity shall cease to be applicable when the State Assembly had exceeded its jurisdiction.

[72] The Federal Court in the case of *Yang Dipertua, Dewan Rakyat & Ors v. Gobind Singh Deo* [2014] 9 CLJ 577; [2014] 6 MLJ 812 held as follows:

> [26] The judicial pronouncements of the Federal Court in *YAB Dato' Dr Zambry bin Abd Kadir & Ors v. YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24 apply with equal force to the argument on the issue of non-justiciability premised on art. 63(1) of the Constitution, even though that case was in relation to proceedings in a

Legislative Assembly under art. 72(1) of the Constitution. *In that case, the Federal Court held that art. 72(1) of the Constitution must be read as being subject to the existence of the Constitution must be read as being subject to the existence of a power of jurisdiction (be it inherent or express) to do whatever that has been done and that the court had the jurisdiction to ascertain whether the power that has been claimed has been provided for, rendering the issue raised by the applicant in that case justiciable*.

...

[40] It is therefore in conceivable that Parliament, after passing a motion, is permitted to allude to standing orders when faced with the want of statutory authority, to suspend the remuneration of the respondent, a course of action that unwittingly renders a constitutional provision meaningless. In the circumstances of the case it is therefore manifestly patent that *the motion to disentitle the respondent of his allowance and benefits was devoid of legal foundation. A constitutional protection granted to Members of Parliament by the imperative provision of art. 64 of the Federal Constitution, which takes in the form of the Houses of Parliament (Privileges and Powers) Act 1952, could not simply be displaced in the absence of clear law*.

(emphasis added)

[73] Further, in *Dewan Undangan Negeri Selangor & Ors v. Mohd Hafarizam Harun* [2016] 7 CLJ 143; [2016] 4 MLJ 661, the Federal Court held as follows:

[37] It is to be noted that the construction of art. 72(1) has come up for determination by our apex court a number of times. *On this point it must always be borne in mind that the power of Parliament and the Legislative Assemblies of the States in Malaysia are limited by the Federal Constitution and the State Constitution respectively*. This principle is as stated by Suffian LP in the case of *Ah Thian v. Government of Malaysia* [1976] 2 MLJ 112 at p. 113 which reads as follows:

> The doctrine of supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of State Legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.

[46] *As regards this appeal, it is our judgment the assembly must act within its constitutional and legal powers before the protection provided for by art. 72(1) can arise, before passing a resolution of an act of contempt having been committed beyond the walls of the assembly. The assembly's powers are limited by the Selangor State Constitution ...*

[47] A careful perusal of the provisions of the Schedule in the Selangor State Constitution, which confers the power and privileges of the assembly, reveal no provision that provides for contempt committed outside the legislative assembly. The defendants too have failed to show which provision in the schedule was relied on to pass the resolution. The assembly has therefore exceeded the jurisdiction provided for in the Schedule.

(emphasis added)

[74] Based on the authorities referred to above, the plaintiffs submit that art. 72(1) of the Federal Constitution does not bar this court from enquiring into the matter complained of in encl. 1 to determine whether the defendant, had acted in excess of their powers prescribed under art. 14A of the PSC.

[75] It is only when it is ascertained that the defendants had acted within the power conferred upon them by art. 14A of the PSC that it can be immune from legal challenge in light of art. 72(1) of the Federal Constitution.

[76] In a nutshell, learned counsel for the plaintiffs, in reliance on the above cases, submit that the decision to vacate the plaintiffs' seats is justiciable. In this regard, it is contended that in so far as the first and second plaintiffs are concerned, the defendant had acted in excess of jurisdiction as art. 14A of the PSC does not apply to them in the first place. In so far as the third and fourth plaintiffs are concerned, it is submitted that the decision was similarly justiciable as the exercise of power had been exercised improperly against them.

[77] The above decisions of the Federal Court are clearly binding on this court. Learned counsel for the defendants also refers to some of the above cases and submits that they lay down a single proposition of law in that there must first be a legislative basis for the House or the State Legislative Assembly to act. It is thus submitted by the defendants that if there is no legislative basis to act, the courts can intervene. On the contrary, if there is a legislative basis to act, the court must refrain from interfering as per art. 72 of the Federal Constitution.

[78] In my view, in summary, and in reality, it is the existence of a power to act that can be questioned. However, once it is determined that there exists such a power, the exercise of that power cannot be questioned or interfered with.

[79] Having set out the above, the crucial question then is whether or not the first defendant had a legislative basis to make the decision it made on 6 March 2023 for the plaintiffs to vacate their seats. For the reasons set out earlier in this judgment, based on the facts pertaining to the third and fourth plaintiffs, I would conclude that there was certainly a legislative basis to make the decision pertaining to their seats. Since art. 14A of the PSC was applicable to them and there was a legislative basis for the exercise of that power to remove them, as such, is non-justiciable and cannot be interfered with. I would further conclude that the exercise of such power to remove them was not exercised improperly as contended.

[80] The position *vis-a-vis* the first and second plaintiffs is however different from the third and fourth plaintiffs as highlighted earlier in this judgment. In my view, having concluded earlier that art. 14(1)(a) of the PSC was not

applicable to them in the first place, there is certainly merit in their contention that there was no legislative basis for them to vacate their seats. In my view, it was a situation where there was no legal foundation in the first place to even move the motion against the first and second plaintiffs.

[81] In my considered view, as held in the case of *Gobind Singh Deo* (*supra*), if the House had made a decision in excess of its jurisdiction, the decision was justiciable, and the court is entitled to intervene.

[82] In the upshot, having considered all matters, in my opinion, the motion for the first and second plaintiffs to vacate their seats was devoid of legal foundation in that art. 14A of the PSC was not applicable to them in the first place. This is not a situation where the court is interfering with the decision of the defendants or to determine whether it was correctly made but rather the court concluding that the decision was made in excess of its jurisdiction which allows room for judicial interference.

[83] As held by the majority in *Ting Tiong Choon* (*supra*), whilst the power to decide on the qualification resides in the Dewan, the court is entitled to interfere if it can be shown that the power had been exercised in excess of jurisdiction. In my view, this is a case where the court is of the view that the first defendant had acted in excess of jurisdiction in vacating the seats of the first and second plaintiffs.

Conclusion

[84] In the upshot, the claims or reliefs sought by the third and fourth plaintiffs are dismissed. However, the claims of the first and second plaintiffs are allowed and the court makes the following declarations:

> (c) A declaration that the first plaintiff was and remained a member of State Legislative Assembly of Penang representing the constituency of Bertam (N. 2) for the duration of the 14th State Legislative Assembly of the State of Penang until its dissolution;
>
> (d) A declaration that the second plaintiff was and remained a member of State Legislative Assembly of Penang representing the constituency of Telok Bahang (N. 40) for the duration of the 14th State Legislative Assembly of the State of Penang until its dissolution;
>
> (g) A declaration that any letter from the second defendant informing the Election Commission that a vacancy has arisen in the State Legislative Assembly of Penang in respect of the constituency of Bertam (N2) is void;
>
> (h) A declaration that any letter from the second defendant informing the Election Commission that a vacancy has arisen in the State Legislative Assembly of Penang in respect of the constituency of Telok Bahang (N40) is void;

A (k) That the first plaintiff be paid all financial entitlements as a state assemblyman for the constituency of Bertam (N2) for the duration between the date the Impugned Motion and Impugned Resolution were passed until the dissolution of the second defendant, including but not limited to all salaries, remuneration and allowances; and

B (I) That the second plaintiff be paid all financial entitlements as a state assemblyman for the constituency of Telok Bahang (N40) for the duration between the date the Impugned Motion and Impugned Resolution were passed until the dissolution of the second defendant, including but not limited to all salaries, remuneration and allowances;

C **[85]** As for costs, bearing in mind that both parties have been partly successful, in the exercise of my discretion, I make no order as to costs and each party is to bear their own costs.

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